IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2609 OF 2006

Attar Tahir Ansari Applicant
versus
The State of Maharashtra Respondent

Shri Mundargi for applicant.
Shri S.S.Pednekar, APP for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 25th August 2006

PC :

1. This is an application for bail where the applicant is in custody. He is accused no.1 in CR No.39 of 2005 registered with Bhoiwada Police Station, at Bhiwandi, District Thane for offences punishable under sections 498-A, 306, 302 R/W Section 34 of IPC..

2. It is not disputed that the applicant was married to the deceased Rehana Bano on 29th September 2002. It is also not disputed that initially she went to reside along with her in-laws and there were frequent disputes. A quarrel used to take place on account of differences with the in-laws and the deceased. It is also not disputed that the complainant

mother has stated in her statement that the deceased used to leave the matrimonial home and come to stay with the mother and thereafter returned back to the husband (present applicant). It is also stated by her that upon a discussion and understanding, the husband and wife resided separately from in-laws. It is also stated by her that about two days before her death the deceased had some difference of opinion and quarrel/fight and had come to the mother’s place. Although, she was saying that she would not return, ultimately, she returned to her husband’s place.

3. Both sides do not dispute that the sister of the deceased Afsana Bano has been married in the same family namely that of the applicant. She was also residing for some time with the deceased and her husband.

4. It is in these circumstances that Shri Mundargi submits that the date of death is 28th December 2004. The complainant has been immediately informed about the same. She comes to the place of residence of deceased immediately and on 29th December 2004 the burial takes place. However, the complainant’s statement is that on

account of some pressure applied and exerted by in-laws of the deceased, she fell threatened and she did not lodge a complaint with the Police with regard to her alleged unnatural death. She disbelieved the version that the deceased died due to the electric shock. However, it is her case that on 3rd January 2005 she was to go to Saudi Arabia and accompany her husband to Haj Yatra. Her husband is a heart patient and although he is the father of the deceased, on account of his delicate health, he was not informed about this fact. The Haj Pilgrimage took place and upon return on 13th February 2005 the father of the deceased was informed about the death. Thereupon, he came down to India and it was decided to lodge a complaint. It was ultimately lodged some time in March 2005 and to be precise on 15th March 2005. Thus, according to Shri Mundargi, this unnatural course of event itself would lent credence to his plea that this is not a case where Section 302 can be invoked. While it is true that there may be some sort of ill treatment and harassment as alleged, but certainly a case for applying of Section 302 of IPC is not made out at all. In his submission, this fact is corroborated prima facie by medical evidence.

5. Shri Mundargi submits that the body which was buried on 29th December 2004 at a common burial ground, was taken out and thereafter taken firstly to local municipal hospital for post mortem and then to Sir J.J. Group of Hospitals. He has invited my attention to the specific questionnaire which is framed by the Police authorities for opinion of the medical experts and submits that the medical experts could not give any conclusive finding and report. In any event, the finding and report opinion is that the injury to the skull could have been ante mortem or post mortem. If the sutures were removed, then according to Shri Mundargi, it cannot be conclusively said that alleged injuries caused because of some blunt edged weapon resulted in the death. The injuries could have been of much earlier in age. In such circumstances and when all witnesses are reiterating the same version, then, this is a case where the applicant deserves to be enlarged on bail. The charge sheet is filed long time back. The applicant has been in custody for more than a year and a half.

6. A compilation of statements and the charge sheet was produced before me. Both sides relied

upon the statement of the complainant mother of the deceased and I have been taken through the portions of the statements so also relevant and material findings in the opinion/ report which is forwarded by the hospitals.

7. On the other hand, Shri Pednekar submits that this is a case where the neighbours so also all relations have been clearly stating that when they reached the site of the death, the deceased appeared to have suffered some injuries on her head and blood was dozing. One of the witness who is neighbour, states that when the body was being washed she could see stains of blood. In these circumstances and when the applicant is the husband of the deceased and there are allegations of harassment and ill treatment, then, this is not a case where the applicant should be enlarged on bail. In any event and without prejudice, if he is to be enlarged, stringent conditions of not entering Bhivandi City Limits so also Kandivali Suburb of Mumbai be imposed on the applicant.

8. With the assistance of learned counsel appearing for parties I have perused the statement of the mother which is recorded by the investigating machinery. Once there is no

dispute that the death occurred on 28th December 2004, the burial performed on 29th December 2004 and the complaint lodged on 15th March 2005 about homicidal death, then, prima facie, the contention that a case u/s 302 has not been made out, has substance. This is a case where the conduct does not appear to be one in normal and natural course. The complainant mother being aware of the ill treatment and harassment to the daughter, insists that she should return back and the daughter returns back and further being aware of the relations between the daughter and the son in law, takes a good two and half months period to lodge the complaint. She is present all through out. It is not as if she has immediately left Bhivandi for abroad. After the burial also she was in Bhivandi City for about three days. On 3rd January 2005 she leaves for Haj Pilgrimage, despite suspecting foul play, completes that pilgrimage, does not inform the father of the deceased till she returns back, is something which raises doubt about her version. In such circumstances and when all the experts could not satisfy the queries of the Police, then even the evidentiary value of the medical evidence is something which will have to be proved and gone into details. The answers to the

questionnaire at pages 93 and 94 are that there is no fracture. Further, the opinion that the sutures may have been removed and the history of the injuries has not been clearly spelt out along with material particulars, it is not as if the opinion is conclusive and is straight way admissible. This is the least that can be said and anything more would prejudice the case of both sides.

9. In my opinion, once the medical examination is conducted at the end of March 2005 upon a delayed complaint and the accused- applicant having been in custody for more than one and half years, so also it is not being pointed out that release with conditions would not subserve the ends of justice, then the applicant deserves to be enlarged on bail. Hence following order.

10. ORDER :-

(i) The applicant shall be enlarged on bail in connection with C.R.No.I-39/2005 registered with Bhoiwada Police Station, Bhiwandi, District Thane subject to furnishing a personal bond of Rs.20,000/- (Rs.Twenty thousand only) with one or two local sureties in the like sum;

(ii) The bail is granted subject to the condition that the applicant shall not enter Bhivandi City limits so also limits of Kandivali Suburb of Mumbai;

(iii) Shri Mundargi states that the applicant would reside at Malegaon and would report to Malegaon City Police Station once in a week till conclusion of the trial;

(iv) The applicant shall submit his address of Malegaon forthwith before he is released. This is condition precedent for release on bail;

(v) The bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

(vi) The applicant shall co-operate with the Trial Court for expeditious disposal of the trial. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

(vii) Any observation/s made in this order shall

not be constructed as any finding or any expression of opinion on the merits of the case at the time of trial.

(viii) Application is disposed of in above terms.

(S.C.DHARMADHIKARI, J.)